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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

MERRILL LYNCH BUSINESS FINANCIAL
SERVICES, INC.,

Plaintiff,

v.

ARTHUR KUPPERMAN, E. ROSS BROWNE,
PAULETTE KRELMAN, PGB
INTERNATIONAL, LLC, and JPMORGAN
CHASE BANK, N.A.,

Defendants,

and

IFIG USA, INC., JOHN DOES (1-10) and ABC
CORPORATIONS (1-10),

Additionally Defendants
on the Crossclaim.

CIVIL ACTION

Civil Action No. 06-4802 (DMC)

**RESPONSE TO STATEMENT AND
SUPPLEMENTAL STATEMENT
OF UNDISPUTED MATERIAL
FACTS OF PLAINTIFF MERRILL
LYNCH BUSINESS FINANCIAL
SERVICES, INC., AND
SUPPLEMENTAL STATEMENT
OF UNDISPUTED MATERIAL
FACTS OF DEFENDANT
JPMORGAN CHASE BANK, N.A.**

Defendant JPMorgan Chase Bank, N.A. (“Chase”), by and through its attorneys, Herrick, Feinstein LLP, hereby responds to the Statement of Undisputed Material Facts of Plaintiff Merrill Lynch Business Financial Services, Inc. (“MLBFS”), filed at docket no. 309, and Supplemental Statement of Undisputed Material Facts of Plaintiff Merrill Lynch Business Financial Services, Inc., filed at docket no. 317, as follows:

Response to Statement of Undisputed Material Facts

1. Chase admits paragraphs 1-12, 14-23, 26-101 and 103-117.
2. Chase disagrees with paragraph 13. MLBFS waived its lien on the assets of PITTRA G.B. International, Inc. (“PITTRA”) in connection with the Omnibus Settlement (defined below) in this matter. See Accompanying Declaration of John M. August, dated November 12, 2009 (the “August Declaration”), at ¶’s 12-16.
3. Chase disagrees with paragraph 24. See August Declaration, at ¶’s 3-4.
4. Chase disagrees with paragraph 25. See August Declaration, at ¶ 5.
5. Chase disagrees with paragraph 102. MLBFS waived its lien on PITTRA’s assets in connection with the Omnibus Settlement in this matter. See August Declaration, at ¶’s 12-16.

Response to Supplement Statement of Undisputed Material Facts

1. Chase admits paragraphs 1-6 and 9-10.
2. Chase disagrees with paragraphs 7 and 8. See August Declaration, at ¶ 4.

Chase, by and through its attorneys, Herrick, Feinstein LLP, hereby respectfully submits that the following facts are not subject to a good faith dispute:

1. Pursuant to an Asset Purchase Agreement dated June 5, 2003, PITTRA transferred certain of its assets to PGB International, LLC (“PGB”) for \$310,000.00. See August Declaration, at ¶ 2.
2. As part of the purchase price, PGB gave PITTRA a promissory note for \$300,000.00, payable within 30 days. See August Declaration, at ¶ 3.

3. A review of PITTRA's bank records show deposits of at least \$378,240.50 during the months of July and August, 2003, which transfers may have been in payment of the purchase price. See August Declaration, at ¶ 4.

4. MLBFS knew of the existence of PGB by at least March 2004. See August Declaration, at ¶ 5.

5. In May 2004, with knowledge of PGB, MLBFS increased its line of credit to PITTRA to \$3,750,000.00 and extended a separate term loan to PITTRA of \$500,000.00. See August Declaration, at ¶ 6.

6. In connection with the May 2004 loan, MLBFS requested that a UCC Financing Statement filed against PGB by Peapack-Gladstone Bank be released, but MLBFS choose not to file its own UCC Financing Statement against PGB. See August Declaration, at ¶ 7.

7. On or about September 20, 2006, the Chapter 7 Trustee appointed in PITTRA's Bankruptcy Case (the "PITTRA Trustee") filed an action in the Bankruptcy Court for the District of New Jersey against PGB, among others, seeking to recover certain of PITTRA's assets that were allegedly improperly transferred, entitled Benjamin A. Stanziale, Jr., Chapter 7 Trustee for PITTRA G.B. International, Inc. v. Arthur Kupperman, et al., Adversary Proceeding No. 06-2702 (MS) (the "Fraudulent Transfer Adversary Proceeding"). See August Declaration, at ¶ 8.

8. In the Fraudulent Transfer Adversary Proceeding, *inter alia*, the PITTRA Trustee sought to avoid the June 5, 2003 transfer of assets from PITTRA to PGB as a fraudulent transfer and to recover PGB's assets for the benefit of PITTRA's creditors, including MLBFS. See August Declaration, at ¶ 9.

9. On or about February 8, 2008, the PITTRA Trustee filed an action in the Bankruptcy Court for the District of New Jersey against MLBFS seeking to recover payments that MLBFS received from PITTRA within 90 days of PITTRA's bankruptcy filing, entitled Benjamin A. Stanziale, Jr., Chapter 7 Trustee for PITTRA G.B. International, Inc. v. MLBFS, Adversary Proceeding No. 08-1131 (MS) (the "MLBFS Adversary Proceeding"). See August Declaration, at ¶ 10.

10. On October 5, 2006, MLBFS filed the above-captioned action (the "District Court Action"). See August Declaration, at ¶ 11.

11. Chase, MLBFS and the PITTRA Trustee subsequently resolved the District Court Action with defendants E. Ross Browne and Paulette Krelman, the Fraudulent Transfer Adversary Proceeding and the MLBFS Adversary Proceeding (the "Omnibus Settlement"). See August Declaration, at ¶ 12.

12. This Court approved the Omnibus Settlement on January 11, 2009, at docket no. 280. See August Declaration, at ¶ 13.

13. In connection with the Omnibus Settlement, the PITTRA Trustee provided Chase and MLBFS with a full release. This release included any claim that Chase's collection of PGB's accounts could be avoided and recovered by the PITTRA Trustee for the benefit of PITTRA's creditors. See August Declaration, at ¶ 14.

14. Chase and MLBFS also provided a full release to the PITTRA Trustee. Specifically, MLBFS waived all claims against the PITTRA estate and withdrew with prejudice the proof of claim it filed in the PITTRA Bankruptcy Case. See August Declaration, at ¶ 15.

15. The Fraudulent Transfer Adversary Proceeding and the MLBFS Adversary Proceeding were dismissed in connection with the Omnibus Settlement. See August Declaration, at ¶ 16.

HERRICK, FEINSTEIN LLP
Attorneys for JPMorgan Chase Bank, N.A.

By: /s/ John M. August
John M. August

Dated: November 12, 2009

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